



THE LEGISLATIVE PROCESS:

A GUIDE TO EFFECTIVE LEGISLATIVE
ADVOCACY WITHOUT LOSING YOUR MIND*



* Legal disclaimer: results not guaranteed

INTRODUCTION

- Who am I?
 - Darcy M. Goddard, Salt Lake County District Attorney's Office
 - CivLAC Coordinator (umm, what is CivLAC?)
 - Non-Political Junkie and Legislative Purist
- What on Earth do I know?
 - More than I did two years ago
- How did I learn it?
 - Trial and error
 - Colleagues in Salt Lake County and in County Attorney offices across the State
 - UAC (particularly Arie Van De Graf and Lincoln Shurtz)
 - UCIP (shout out to Johnnie M.!)

COMMON UNDERSTANDING

(OR: SCHOOLHOUSE ROCK REALLY WAS THE BEST TEACHER)

Schoolhouse Rock: America - I'm Just a Bill Music Vi...  

MORE VIDEOS ^



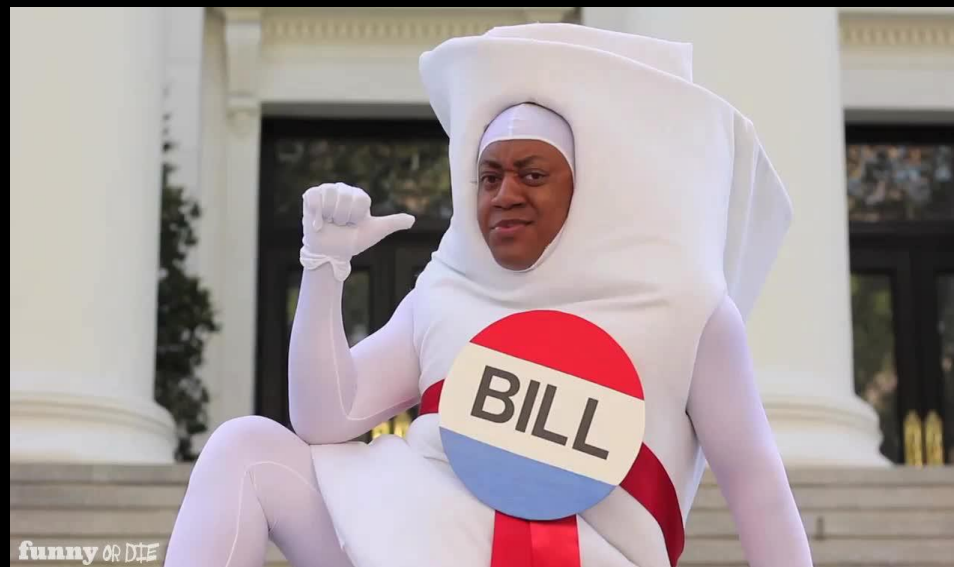
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You Tube



PRACTICALLY BLASPHEMY, BUT:
IT'S ACTUALLY A LITTLE MORE
COMPLICATED, AND A LITTLE MORE
INCLUSIVE, THAN SCHOOLHOUSE ROCK
WOULD HAVE YOU BELIEVE!



IT CAN ACTUALLY BE A LOT MORE INCLUSIVE!

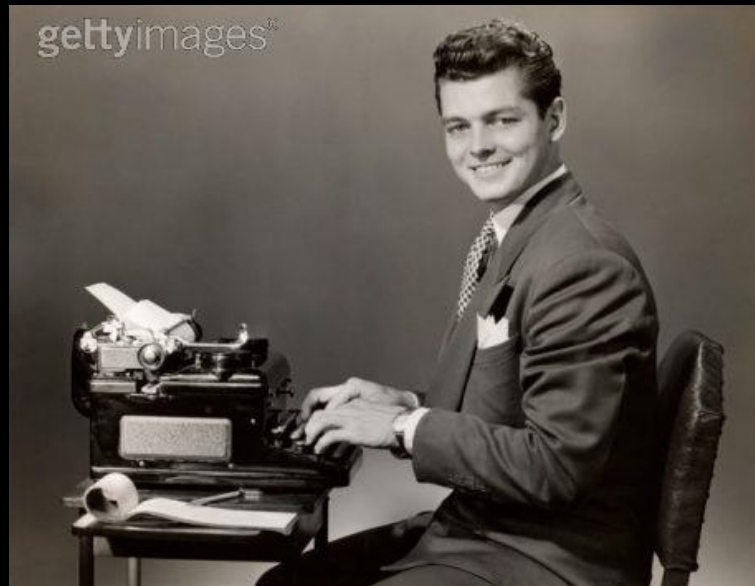
- Ways to be involved:
 - Get to know your Senators and Representatives
 - Elected officials in the counties should actively work to cultivate relationships with their own elected representatives
 - Know the ways you can help, like:
 - Formal interim study groups and task forces (examples: UGIA interim study group, LUDMA committee)
 - Suggestions for bills (example: body camera footage, tax credit for correctional psychiatrists and APRNs)
 - Suggestions for bill language, both before and during the session (example: asset forfeiture ([SB87](#)) and free expression ([HB298](#)))
 - Speaking against bad bills and for good bills (examples: committee hearings, one-on-one visits, letters, requests for caucus time, etc.)
 - TIP: Offer to help not just with what you want, but also with their wishlists
 - Make suggestions, but listen to them, as well
 - Example: criminal bills and leaders in SWAPLAC
 - Always try to find a solution or constructive alternative (“No, that’s idiotic” = rarely helpful)

CASE STUDY: UTAH GOVERNMENTAL IMMUNITY ACT INTERIM STUDY GROUP

- What's the Utah Governmental Immunity Act, you ask? And why was it set for interim study?
- Began with 2015 newspaper article with Governor and others expressing concerns with status quo for excess claims, e.g., verdict or settlement, application to the Board of Examiners for excess, recommendation from Board to Legislature
- A few Senators from both parties decided to tackle the issue
- Pulled together groups of stakeholders, e.g., AG's Office, county attorneys, insurance industry representatives, risk managers, plaintiffs' attorneys

CASE STUDY: UTAH GOVERNMENTAL IMMUNITY ACT INTERIM STUDY GROUP (CONT.)

- Quickly turned into a discussion not just about the Board of Examiners, but also the damage caps, escalator clause, etc.
- Did not involve formal minutes or other record-keeping
 - In retrospect, I think most participants would agree that was a mistake



CASE STUDY: UTAH GOVERNMENTAL IMMUNITY ACT INTERIM STUDY GROUP (CONT.)

- General agreement in the group:
 - The current Board of Examiners process made little sense, was time consuming, and was likely ineffective (resulted only in a recommendation)
- Sharp divides in the group:
 - Whether substantial changes were even necessary
 - No caps v. higher caps v. leaving caps “as-is”
 - Whether changing the escalator was necessary, or even do-able
 - Governmental entities v plaintiffs’ lawyers over the caps and escalator
 - Mechanism for submitting and supporting excess claims
 - Who, if anyone, would defend the claim for the State and taxpayers

CASE STUDY: UTAH GOVERNMENTAL IMMUNITY ACT INTERIM STUDY GROUP (CONT.)

- Participants engaged in state-by-state research to see how other states are handling issues of immunity and damage caps; presented to the group
 - This is where a more formal process would have been helpful
- Composition of group made open discussion difficult
 - One person in particular thought competing views were “immoral”* (*not my word)
- First draft would have done it all for the plaintiffs’ bar: increased caps, increased escalator, and a plaintiff-friendly hearing in the Legislature
 - TIP: think about fiscal notes, as this bill had a minimal note despite the obvious increased costs

CASE STUDY: UTAH GOVERNMENTAL IMMUNITY ACT INTERIM STUDY GROUP (CONT.)

- Subsequent drafts removed the increased caps, kept the escalator, and went back and forth on how hearings would be handled (e.g., ALJ (who pays), defense (who pays), force of recommendation)
 - Counties, cities, and UAC actively lobbied against the damages caps increase; less so against the escalator
 - The AG's Office actively lobbied against a mandate that it defend claims unless adequate funding came along with that mandate
- In the end, the final bill (SB98) did not solve the initial issue (Board of Examiners). It did increase the escalator slightly, with damage caps almost certain to be raised again shortly

CASE STUDY: BODY CAMERA FOOTAGE

- By mid- to late 2016, it was clear there was a significant divide on how to handle body camera footage of officer-involved shootings
- Salt Lake County DA's decision not to produce footage under GRAMA resulted in months of appeals with the ACLU, with no way to expedite
- Salt Lake County suggested to the ACLU's lawyer and, eventually, to Representative Ray, that there should be an expedited appeals process in specific types of cases.
- He agreed.
- We sent some language.
- And then? Nothing.
- Nada. Zilch. Zero.



CASE STUDY: BODY CAMERA FOOTAGE (CONT.)

- TIP: Your elected representatives' priorities may not be (and probably aren't, let's face it) the same as your priorities
 - That's not a criticism; that's just reality
- Months later, we still hadn't heard anything and were arguably becoming stalkers of both Representative Ray and the "new bills" page on the Legislature's website
- Eventually, however, the bill ([HB381](#)) did get released
- With only one language change, it got unanimous support in committee, on the House floor, and then in the Senate
- It didn't help in our pending case, of course, but it will provide guidance in the future for us and for other law enforcement and prosecution agencies

CASE STUDY: BODY CAMERA FOOTAGE (CONT.)



CASE STUDY: ASSET FORFEITURE INFORMAL WORKING GROUP WITH SENATOR THATCHER

- After the 2016 Session, it was obvious that asset forfeiture would be a huge topic of conversation in the 2017 Session
- Groups such as Libertas and the ACLU were gearing up to eliminate civil asset forfeiture completely, while law enforcement and prosecuting entities wanted to continue the practice with beefed up, “best practices” protections to ensure due process
- Senator Thatcher formed a large working group comprised of law enforcement at all levels, prosecutors, and civil attorneys from around the State to assess and “fix” the system



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CASE STUDY: ASSET FORFEITURE INFORMAL WORKING GROUP WITH SENATOR THATCHER (CONT.)

- The overarching goal of the group was to retain civil asset forfeiture, BUT to identify and correct any areas of existing law where “innocent owners” may not be fully protected
- Working collaboratively, the group identified areas where “innocent owner” protections could be beefed up, attorney fees provisions could be improved in a way that incentivized everyone to act quickly to address disputed claims, and prosecutors would be encouraged to pursue criminal claims (if any) quickly and, if not, return seized property
- With key stakeholders and the Senator on board with recognized and agreed areas of improvement, it was all Kumbayah, right?



← Us!

CASE STUDY: ASSET FORFEITURE INFORMAL WORKING GROUP WITH SENATOR THATCHER (CONT.)

•NOPE

- We still had a competing bill
- We still had the ACLU
- We still had Libertas
- We still had leadership concerns

Us →
(just kidding)



← Really us

CASE STUDY: ASSET FORFEITURE INFORMAL WORKING GROUP WITH SENATOR THATCHER (CONT.)

- And so from December 2016 until (literally) the closing buzzer on March 9, 2017, it was our job to help Senator Thatcher meet with other interested groups and with his own colleagues both in the Senate and in the House
- It was also our job to work on revising the language as the Session progressed to address concerns and improve the process even more
- AND it was our job to testify in committees and prepare written materials helping Senator Thatcher explain his bill and why it was better than the competition
- ALL THE GROUPS came together in a concerted effort to support SB87, which passed both houses at about 11:59:32 on March 9, 2017.

CASE STUDY: FREE EXPRESSION

- This type of collaborative approach can also work during the Session to address potential problems with language in bills you're just seeing then
- Example, Representative Thurston's Free Expression bill, which definitely had good intentions but, as originally written, would have made it impossible for local governments to enact reasonable time-place-manner restrictions on free expression outside government buildings.
- It also would have conflicted with the electioneering prohibitions in other sections of Utah Code.



CASE STUDY: FREE EXPRESSION (CONT.)

- Fortunately for us, Representative Thurston was wonderful to work with, as was his assigned drafting attorney Michael Curtis
 - TIP: Learn what you can about the drafting attorney and how he/she prefers to work
 - TIP: Try to snag a copy of the legislative intern list, with e-mails and cell numbers.
- With feedback from Salt Lake City, Salt Lake County, CivLAC attorneys and others, Representative Thurston's bill got immeasurably better, and measurably closer to existing First Amendment case law
- In other words, working with him resulted in a much better end result (SB298) for everyone.



← Everyone

CASE STUDY: WHEN WE ALL REALLY CAN'T GET ALONG

- As you can probably tell, my preferred approach toward legislation (and litigation . . . and life, really) is to try finding common ground, where everyone can win at least something
- Sometimes, though, that just won't work.
- Case in point, this year's Private Attorney General Doctrine Bill, [HB79](#).
- This would have vastly increased costs to governmental entities at all levels (and yet, contrary to all logic, had a \$0 fiscal note)
 - TIP (repeated): Understand how fiscal notes work
- This is one that all governmental entities came together to fight, and together we won.
 - TIP: This bill will almost certainly be back, so strategizing early will be necessary!

TIPS AND TRICKS

- When I say “start early,” what do I mean? NOW.
 - WHEN? It may seem crazy, but the time to gear up for the 2018 Session begins in April 2017.
 - There can be real risks to waiting too long, and during the session is definitely too long!
 - WHY? Legislators have finally gotten some sleep, and they are looking for what important issues should be addressed in the upcoming year
 - WHO? All of them. And now they actually have time to meet with you, hear your concerns, and talk about theirs. You don’t get that luxury during the Session.
 - WHAT? Anything. Think about what your counties’ biggest concerns are.
 - WHERE? Look at the website to see who ran what last year and how to contact them. See: <https://le.utah.gov/asp/billsintro/index.asp>
 - HOW? Once you’ve identified your issues and some elected officials who might help you address them, reach out! And if you want help doing it, work through UAC, CivLAC (civil issues (dgoddard@slco.org)), SWAPLAC (criminal issues (pboyden@slco.org or wcarlson@slco.org), or your UAC affiliate groups.

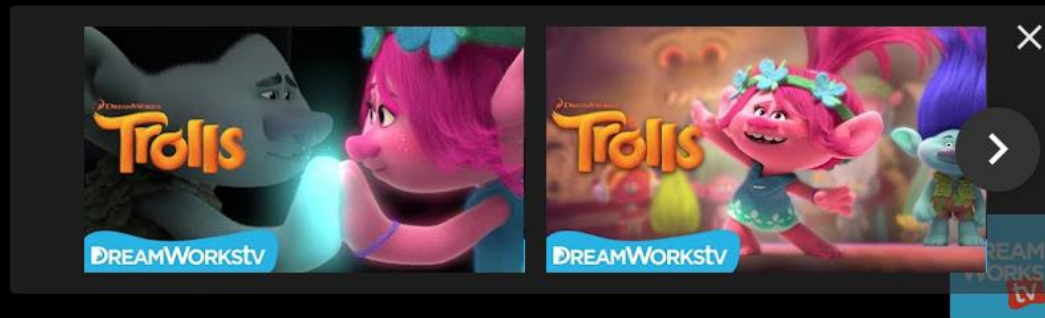
TIPS AND TRICKS (CONT.)

- Leading up to and during the Session, you can easily track bills to stay up to date.
 - CivLAC and SWAPLAC do this for their members
 - UAC does this for County officials statewide
 - UAC's affiliate groups (e.g., Clerks, Assessors) do this on bills of specific interest to those groups
 - TIP: If your affiliate group has specific concerns with specific bills, consider raising them with your County Attorney's Office. It rarely hurts to have more people on your side.
- You can also easily set this up for yourself! See <https://le.utah.gov/asp/billtrack/track.asp>
 - TIP: You can track them all on that page or you can do that and get e-mail updates, too,

TIPS AND TRICKS (CONT.)

- DON'T GIVE UP! With some bills, you try and try and try—pro or con—and it seems like it's hopeless. But until midnight on the last day, pretty much anything can happen.
 - **TIP: BE POPPY!**

"Get Back Up Again" Clip | TROLLS



1:11 / 3:20



YouTube



TIPS AND TRICKS (CONT.)

- Explore all your options: seek one-on-one meetings, testify before committees, send letters to key players, mobilize your troops!
- TIP: When it matters, be persistent. **BE DUG.**

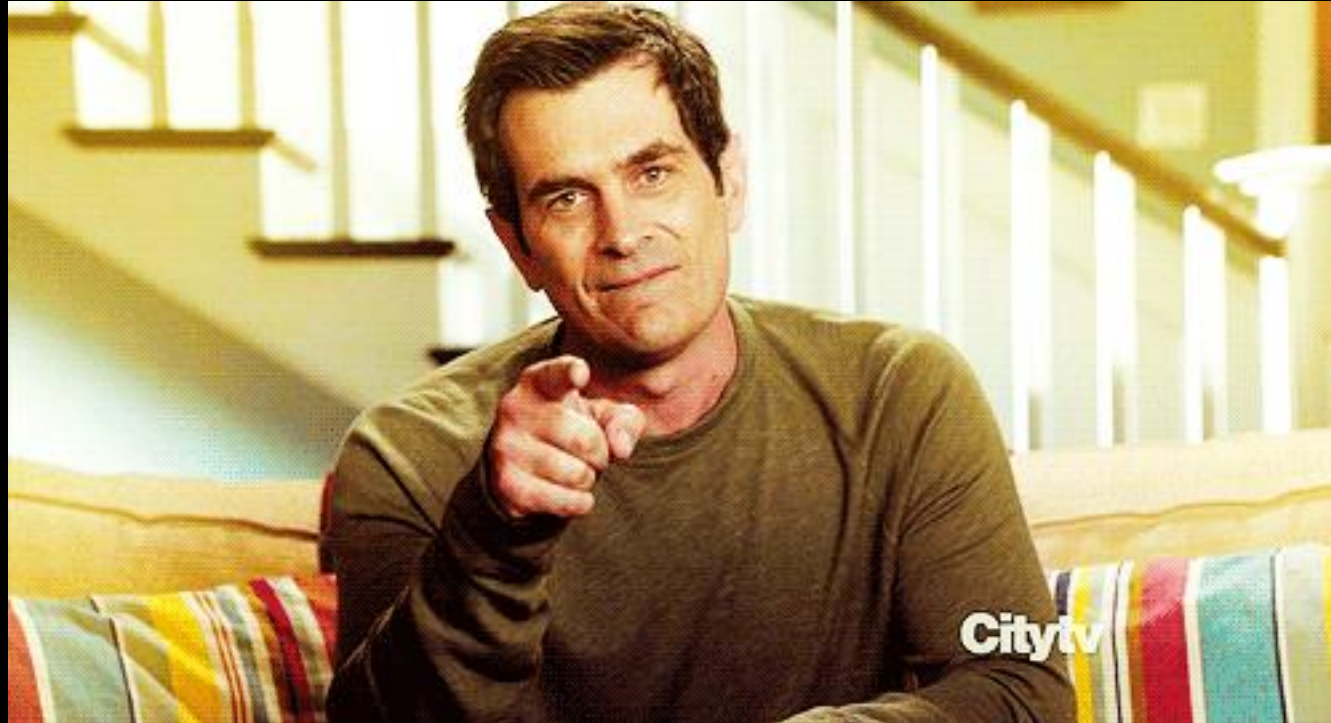


TIPS AND TRICKS (CONT.)

- Redefine success. Yes, really.
- You're never going to get everything you want.
- Sometimes "success" means:
 - Making a bad bill slightly less bad
 - Getting a hasty "solution" to a complicated issue sent to interim study, knowing you'll be dealing with it again next year
 - Getting something you really want in a bill but having to give up something else important to get it. (Example, [HB399](#).)



THANK YOU!



Darcy M. Goddard, Chief Policy Advisor (Civil Division)
Salt Lake County District Attorney's Office
dgoddard@slco.org or 385.468.7761